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EXAMINER

ZHAO, DAQUAN

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UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

Ex parte THE PROCTOR AND GAMBLE COMPANY¹

Appeal 2017-001026
Application 14/476,288
Technology Center 2400

Before CARLA M. KRIVAK, BRADLEY W. BAUMEISTER, and
NABEEL U. KHAN, *Administrative Patent Judges*.

BAUMEISTER, *Administrative Patent Judge*.

DECISION ON APPEAL

Appellant appeals under 35 U.S.C. § 134(a) from the Examiner's rejection of claims 1–4 and 6–19. App. Br. 4.² We have jurisdiction under 35 U.S.C. § 6(b).

We affirm.

¹ Sion Agami and Miguel Alvaro Robles are listed as inventors.

² Rather than repeat the Examiner's positions and Appellant's arguments in their entirety, we refer to the following documents for their respective details: the Final Action mailed October 30, 2015 ("Final Act."); the Appeal Brief filed March 29, 2016, as modified by the Response to Notification of Non-compliant Appeal Brief filed August 15, 2016 ("App. Br."); the Examiner's Answer mailed September 22, 2016 ("Ans."); and the Reply Brief filed October 24, 2016 ("Reply Br.").

STATEMENT OF THE CASE

Appellant describes the present invention as follows:

Methods of collecting information from an individual regarding absorbent products are provided. A method entails collecting input information from an individual regarding absorbent product use wherein at least some of the information collected includes data generally known by most consumers. The method further entails collecting still or video image data from an individual consumer using a computing device and uploading the input information and still or video image data to a server. The input information and still or video image data is used to output data regarding the absorbent articles and to output a set of correlations between the visual data and the input information.

Abstract.

Claims 1–4 and 6–19 stand rejected under 35 U.S.C. § 101 as being directed to unpatentable subject matter. Final Act. 3–4.

Claims 1–4 and 6–19 stand rejected on the ground of non-statutory double patenting as being unpatentable over claims 1, 2, and 4–20 of Agami (US 8,843,400 B2; issued Sept. 23, 2014). Final Act. 4–5.

The following claims are illustrative of the argued subject matter:

1. A method of collecting information from an individual regarding an absorbent product, the method comprising:
 - (a) collecting input information from an individual regarding the absorbent product use wherein at least some of the information collected includes data generally known by most consumers;
 - (b) collecting still or video image data from an individual consumer using a computing device;
 - (c) uploading input information and still or video image data to a server;
 - (d) using the input information and still or video image data collected to output data regarding the absorbent products; and

(e) using the input information and still or video image data collected to output a set of correlations between the video image_data and the input information;

wherein the step of collecting still or video image data comprises:

- a. placing the absorbent product in proximity to a computing device configured to capture still or video image data;
- b. opening an application on the computing device;
- c. selecting information from a drop down menu regarding the absorbent product;
- d. centering the absorbent product;
- e. capturing the still or video image data;
- f. uploading the still or video image data to a server through the application.

6. The method of claim 1, wherein the step of acquiring still or video image data from a subject further comprises:

- a. using a virtual frame specific to the type of absorbent product chosen in the drop down menu; and
- b. centering the absorbent product using photo alignment indicia.

7. The method of claim 6, wherein the step of acquiring still or video image data from a subject further comprises enhancing a stained area of the absorbent product.

We review the appealed rejections for error based upon the issues identified by Appellant, and in light of the arguments and evidence produced thereon. *Ex parte Frye*, 94 USPQ2d 1072, 1075 (BPAI 2010) (precedential).

THE 101 REJECTION

Contentions

The Examiner finds that the pending method claims are directed to the abstract idea of collecting data from a user, manipulating the collected data,

and outputting the manipulated data. Ans. 2–3. The Examiner further finds that none of the limitations add significantly more than this abstract idea. *Id.* at 3.

Appellant first asserts that the claims amount to significantly more than abstract ideas at least for reasons that were set forth in *Ex Parte Steven J. Scott* (PTAB Appeal 2012-00934; mailed Mar. 12, 2015) (“Scott Decision”). App. Br. 4–5. Appellant next argues that the present claims amount to significantly more than abstract ideas according to the USPTO 101 Guidelines. *Id.* at 5–6 (citing July 2015 Update to the 2014 *Interim Guidance on Subject Matter Eligibility* (2014 IEG) published on Dec. 16, 2014 (79 Fed. Reg. 74618), Appendix 1: Examples). We address these arguments *seriatim*.

Principles of Law

In *Mayo Collaborative Services v. Prometheus Labs., Inc.*, 132 S. Ct. 1289, 1294 (2012), the Supreme Court set forth an analytical framework under § 101 to distinguish patents that claim patent-ineligible laws of nature, natural phenomena, and abstract ideas—or add too little to such underlying ineligible subject matter—from those that claim patent-eligible applications of those concepts. First, given the nature of the invention in this case, we determine whether the claims at issue are directed to a patent-ineligible abstract idea. *Alice Corp. v. CLS Bank Int’l*, 134 S. Ct. 2347, 2355 (2014). If so, we then consider the elements of each claim—both individually and as an ordered combination—to determine whether the additional elements transform the nature of the claim into a patent-eligible application of that abstract idea. *Id.* This second step is the search for an “inventive concept,” or some element or combination of elements sufficient to ensure that the claim in practice amounts to “significantly more” than a patent on an ineligible concept. *Id.*

DDR Holdings, LLC v. Hotels.com, L.P., 773 F.3d 1245, 1255 (2014).

The *DDR Holdings* court also explained that claims are directed to patent-eligible subject matter, as opposed to patent ineligible abstract ideas, when

they do not merely recite the performance of some business practice known from the pre-Internet world along with the requirement to perform it on the Internet. Instead, the claimed solution is necessarily rooted in computer technology in order to overcome a problem specifically arising in the realm of computer networks.

Id. at 1257.

Conversely, claims are ineligible for patent protection when “the focus of the claims is not on . . . an improvement in computers as tools, but on certain independently abstract ideas that use computers as tools.”

Electric Power Group, LLC v. Alstom S.A., 830 F.3d 1350 at 1354 (Fed. Cir. 2016).

“[M]erely selecting information, by content or source, for collection, analysis, and display does nothing significant to differentiate a process from ordinary mental processes, whose implicit exclusion from § 101 undergirds the information-based category of abstract ideas.” *Id.* at 1355.

Analysis

The present claims are distinguishable from those at issue in *Scott*. *Scott*’s invention was directed to a specialized human-machine interface (HMI), such as a computer touch screen, by which the user, through touch inputs, could control the touch screen’s graphical display of data trends in a particular manner. *See* US Application No. 12/242,396, Specification (the “’396 Spec.”) ¶¶ 35–39. For example, for a single graphical display that represents multiple time vs. performance trends (e.g., step-function or sinusoidal waves), *Scott*’s HMI system allowed a user to expand or alter the

scale of one trend, while leaving the other represented trends unchanged. '396 Spec. ¶ 48; FIGs 5, 6. Scott's claim 1 is illustrative of that claimed method:

1. A method of operating a Human-Machine Interface (HMI) system, the method comprising:
 - receiving operational data associated with an operation of a machine;
 - processing the operational data associated with the operation of the machine to determine a trend in the operational data;
 - displaying a graphical representation of the trend;
 - receiving a first user input and a second user input simultaneously on a surface of a user interface;
 - processing the first user input and the second user input to determine a change in the trend; and
 - displaying a graphical representation of the change in the trend.

Scott Decision 2–3 (citing US Application No. 12/242,396, claim 1).

Scott's claims, then, were directed to a solution that is rooted in computer technology in order to overcome a problem specifically arising in the realm of computer networks. *DDR Holdings*, 773 F.3d 1245 at 1257. That is, Scott's claims were directed to a method of using an improved computer tool—not to a method of using a conventional computer tool merely to manipulate data more efficiently. *Electric Power Group, LLC*, 830 F.3d at 1354.

In contrast, Appellant does not sufficiently explain why the presently claimed method steps, either alone or taken as a combination, relate to improvements in computers as tools. *See App. Br.*; *see Reply Br.* Appellant merely asserts that the present claims “include the use of [] tangible

device[s],” such as “a computing device to collect still or video image data of an absorbent product.” App. Br. 5. Nor does Appellant assert or provide sufficient evidence that dependent claim 6’s use of a virtual frame, or claim 7 and 17’s enhancement of stained areas, entails improvements to conventional tools.

Appellant’s invention is likewise distinguishable from the cited example of the July 2015 Interim Patentability Guidelines. Cited claim 2 of those examples reads as follows:

2. A method of distributing stock quotes over a network to a remote subscriber computer, the method comprising:

providing a stock viewer application to a subscriber for installation on the remote subscriber computer;

receiving stock quotes at a transmission server sent from a data source over the Internet, the transmission server comprising a microprocessor and a memory that stores the remote subscriber’s preferences for information format, destination address, specified stock price values, and transmission schedule, wherein the microprocessor

filters the received stock quotes by comparing the received stock quotes to the specified stock price values;

generates a stock quote alert from the filtered stock quotes that contains a stock name, stock price and a universal resource locator (URL), which specifies the location of the data source;

formats the stock quote alert into data blocks according to said information format; and

transmits the formatted stock quote alert over a wireless communication channel to a wireless device associated with a subscriber based upon the destination address and transmission schedule,

wherein the alert activates the stock viewer application to cause the stock quote alert to display on the remote subscriber computer and to enable connection via the URL to the data

source over the Internet when the wireless device is locally connected to the remote subscriber computer and the remote subscriber computer comes online.

The Guideline's explanation associated with Example claim 2 clarifies when looking at the additional limitations as an ordered combination, the invention as a whole amounts to significantly more than simply organizing and comparing data. The claimed invention addresses the Internet-centric challenge of alerting a subscriber with time sensitive information when the subscriber's computer is offline. This is addressed by transmitting the alert over a wireless communication channel to activate the stock viewer application, which causes the alert to display and enables the connection of the remote subscriber computer to the data source over the Internet when the remote subscriber computer comes online. These are meaningful limitations that add more than generally linking the use of the abstract idea (the general concept of organizing and comparing data) to the Internet, because they solve an Internet-centric problem with a claimed solution that is necessarily rooted in computer technology, similar to the additional elements in *DDR Holdings*.

Id. at 4–5.

Appellant's claims merely are directed to “the performance of some business practice known from the pre-Internet world along with the requirement to perform it on the Internet.” *DDR Holdings*, 773 F.3d 1245 at 1257. Restated, Appellant's claims are directed to the patent ineligible abstract ideas of data collection, analysis, and display. Furthermore, the claims lack sufficient additional elements that would confine the abstract idea to a particular useful application.

THE NON-STATUORY DOUBLE PATENTING REJECTION

Because Appellant presents no arguments regarding the Examiner's non-statutory double patenting rejection (Final Act. 4–5; Ans. 3–5), we

summarily sustain this rejection. *See* MPEP § 1205.02 (“If a ground of rejection stated by the examiner is not addressed in the appellant’s brief, that ground of rejection will be summarily sustained by the Board.”).

DECISION

The Examiner’s decision rejecting claims 1–4 and 6–19 is affirmed.

No time period for taking any subsequent action in connection with this appeal may be extended under 37 C.F.R. § 1.136(a)(1). *See* 37 C.F.R. § 1.136(a)(1)(iv).

AFFIRMED